

REMARKS

Applicants thank the Examiner for the detailed Office Action dated February 7, 2005. Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 1, 2, 4, 6, 7, 9-11, 16-26, 44-46, 49-52, 54, 55, 57-59, 61, 62, 64, 78-80, 85-89 and 91-106 were pending in the application.

Claims 50-52, 54-55, 57-59, 61, 62, 64, 79, 85-89, 91, 94, and 98 are requested to be cancelled without prejudice or disclaimer.

Claims 1, 6, 10-11, 18-20, 24, 44-46, 78, 80, 92-93 96-97, 99-102, 104, and 106 are currently being amended.

Claims 107-165 are being added.

After amending the claims as set forth above, claims 1, 2, 4, 6-7, 9-11, 16-26, 44-46, 49, 78, 80, 92-93, 95-97, and 99-165 are now pending in this application.

Interview Summary

On March 30, 2005, Applicants' undersigned representative and Examiner Robert Hopkins participated in an interview where proposed amended independent claims 1, 44, 78, 92, 99, and proposed new independent claims A, B, C, and D were discussed in view of the cited references, and all of the art cited by Applicants up to and including the March 24, 2005, Information Disclosure Statement. The Examiner also considered U.S. Patent No. 2,978,064 to Deaver, and did not believe that patent was material to the patentability of Applicants' claims.

Agreement was reached that support for the catalytic converter being positioned in the ductwork as recited in claim 96 can be found in U.S. Patent Application No. 10/363,849, which is incorporated by reference into the present application. Agreement was also reached that claim

Amendments to the Drawings:

Please replace the originally filed drawing sheets with the attached drawings sheets (29 sheets, Figs 1-33)

Attachment: Replacement Sheets (29 pages)

92 particularly points out and distinctly claims the invention in accordance with 35 U.S.C. § 112 ¶2 even though the means clauses recite some structure. Further, agreement was reached that there is no motivation to combine to Rohrer with Brownell under 35 U.S.C. § 103 when the teachings of each reference are considered as whole.

With regard to the claims, the Examiner agreed that independent claim 78 was allowable over the art of record. The Examiner also agreed that proposed new independent claim C would be allowable over the art of record, if it was amended to recite a system including a kitchen hood. With regard to independent claims 1, 44, 92, and 99 and proposed new independent claim D, the Examiner's position was that the preamble and the use clauses of these claims would not be given any weight in considering whether the claims are patentable. Thus, the Examiner's position was that none of these claims were limited to a cartridge or to the use described, but these claims would be allowable if they were amended to provide additional structure to indicate a cartridge-type apparatus.

Claim Rejections – 35 U.S.C. § 112 ¶1

On page 2 of the Office Action, claims 94, 96 and 98 were rejected under 35 U.S.C. § 112 ¶1 as being unpatentable for failing to comply with the written description requirement. Specifically, the recitation of a catalytic converter in claims 94, 96, and 98 was rejected because the Patent Office was unable to locate disclosure of a catalytic converter in the original specification. Applicants have canceled claims 94 and 98. As noted in the interview summary, U.S. Patent Application No. 10/363,849 (issued as U.S. Patent No. 6,814,783), which is incorporated by reference into this application, describes the use of a catalytic converter in the ductwork of a kitchen hood system (see col. 5, lines 60-65; col. 6, lines 19-31; col. 7 lines 6-11, 19-30; and Figs. 2A, 2B, and 2C) and provides support for the same in the present application. Accordingly, Applicants submit that claim 96 is in compliance with 35 U.S.C. § 112 ¶1. Accordingly, Applicants respectfully request withdrawal of this rejection.

Claim Rejections – 35 U.S.C. § 112 ¶2

On page 2 of the Office Action, claims 92-98 were rejected under 35 U.S.C. § 112 ¶2 as being unpatentable for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. Applicants note that claims 94 and 98 have been canceled and that claims 93 and 95-97 depend from independent claim 44 or 78 rather than claim 92. Turning to the merits of the rejection, agreement was reached in the interview that the means clauses recited in independent claim 92 comply with 35 U.S.C. § 112 ¶2. Accordingly, Applicants respectfully request withdrawal of this rejection.

Claim Rejections – 35 U.S.C. § 102

On pages 3-4 of the Office Action, claims 50, 54, 55, 57, 58, 59, 61, 62, 64, 85, 86, 88, 89, and 91 were rejected under 35 U.S.C. § 102(b) as being unpatentable over U.S. Patent No. 4,105,422 (“Kiguchi”). Applicants have canceled the rejected claims without prejudice to further prosecution on the merits.

Claim Rejections – 35 U.S.C. § 103(a)

On pages 6, 7 and 8 of the Office Action, claims 1, 2, 6, 7, 9-11, 16-21, 23, 44-46, 49, 78-80, 92, 95, 97, 99, 100, and 102-106 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,955,949 (“Rohrer”) in view of U.S. Patent No. 6,797,041 (“Brownell et al.”). Applicants note that claims 1, 44, 78, 92, and 99 are in independent form, and the remainder of the rejected claims depend from these independent claims.

As a result of the interview, agreement was reached that there is no motivation or suggestion to combine Rohrer and Brownell et al. under 35 U.S.C. § 103(a) when both references are considered as a whole. Also, agreement was reached that claim 78 is allowable over the cited references. Applicants note in this regard that proposed amended claim 78 submitted prior to the

interview has been amended in this reply to recite a cartridge. Applicants respectfully submit that claim 78 is still allowable over the cited references.

With regard to independent claims 1, 44, 92, and 99, the Examiner indicated in the interview that he did not consider the preamble reciting a “cartridge” to be a limitation to the claim, nor did he give any weight to the use clauses recited in the claims. For these reasons the Examiner felt that the claims were still objectionable.

With regard to the preamble being a claim limitation, Applicants submit that by using the preamble to provide antecedent basis for terms in the claim body, the terms relied on in the preamble are limitations to the claim. Catalina Mktg Int’l, Inc. v. Coolsavings.com, Inc., 289 F.3d 801, 808 (Fed. Cir. 2002) (explaining that “dependence on a particular disputed preamble phrase for antecedent basis may limit claim scope because it indicates a reliance on both the preamble and claim body to define the claimed invention”); see Electro Scientific Indus., Inc. v. Dynamic Details, Inc., 307 F.3d 1343, 1348 (Fed. Cir. 2002) (holding that because antecedent basis for the term “circuit boards” is derived from the preamble, the preamble definition of the term “circuit boards” limits the term throughout the body of the claim); Bell Communications Research, Inc. v. Vitalink Communications Corp., 55 F.3d 615, 621 (Fed. Cir. 1995) (holding that because antecedent basis for the term “packet” is derived from the preamble, the preamble limitations on the term “packet” also limit the term throughout the body of the claim); Rapoport v. Dement, 254 F.3d 1053, 1059 (Fed. Cir. 2001) (explaining that by not treating a phrase in the preamble as a claim limitation, a corresponding phrase in the body of the claim would lack antecedent basis). Applicants note that independent claims 1, 44, 92, and 99 all rely on the preamble for antecedent basis for the term cartridge.

Furthermore, with regard to the use of functional language in claims, Applicants note that “[a] patent applicant is free to recite features of an apparatus either structurally or functionally.” In re Schreiber, 128 F.3d 1473, 1478 (Fed. Cir. 1997). A reference anticipates a claim only if the reference “explicitly or inherently discloses every limitation recited in the claims.” Id. Applicants respectfully submit that it is improper to ignore functional language in the claims.

Rather, the appropriate inquiry is to determine whether the prior art expressly or inherently discloses the recited functional limitation. Id. (holding that functional limitations in a claim to a popcorn dispenser were found to be inherent in the prior art references; also noting that the examiner and the Board of Patent Appeals concluded that functional limitations of the claim were not given patentable weight because they were found to be inherent in the prior art reference). Accordingly, Applicants submit that it is improper for the Patent Office to simply ignore language recited in the claims which is believed to be functional. Rather, the Patent Office is required to show that the recited limitations are either explicitly or inherently disclosed in the cited references.

Notwithstanding Applicants' belief that these claims are novel over the cited art as written, Applicants have amended independent claims 1, 44, 92, and 99 to refer to the relationship between the filters and the cartridge in order to obtain a timely allowance of this application. For example, claim 1 has been amended to recite "wherein the baffle filter and the packed bed are coupled together in the cartridge." Claim 44 has been amended to recite "wherein the plurality of filters are coupled together to form the cartridge." Claim 92 has been amended to recite "a frame used to hold the first and second means together to form the cartridge." Claim 99 has been amended to recite "a bed of particles coupled together with the baffle filter to form the cartridge." Accordingly, Applicants submit that the Patent Office's concerns regarding claims 1, 44, 92, and 99 have been overcome.

The subject matter recited in the claims which depend from independent claims 1, 44, 92, and 99, considered as a whole, are also patentable. Accordingly, the Applicants request withdrawal of the rejection of independent claims 1, 44, 92, and 99 and the claims which depend therefrom under 35 U.S.C. § 103(a).

New Claims

Applicants have added new independent claims 132, 143, and 154. Applicants have rewritten proposed new independent claim C, which the Examiner indicated would be allowable,

as new claim 143. New claim 132 recites a “system” which includes a “kitchen hood” and a “cartridge that includes a bed of particles and one or more additional filters.” New claim 154 recites a “separation cartridge” which includes “a baffle filter” and a “bed of particles” where “the cartridge is used to separate one or more entrained oleo substances from a gas stream in a kitchen hood” and where “no additional filters are positioned between the baffle filter and the bed of particles in the cartridge.” Applicants submit that the cited references do not show, teach or suggest the subject matter recited in new independent claims 132, 143, and 154 and the claims which depend from these claims.

Allowable Subject Matter

Applicants thank the Examiner for indicating on page 10 of the Office Action that claims 4, 22, 24-26, 51, 52, 87, 93 and 101 contain allowable subject matter.

* * *

Applicants respectfully submit that each and every outstanding objection and rejection has been overcome, and the present Application is in a condition for allowance. The Applicants request reconsideration and allowance of the pending claims.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

Applicants respectfully put the Patent Office and all others on notice that all arguments, representations, and/or amendments contained herein are only applicable to the present patent application and should not be considered when evaluating any other patent or patent application including any patents or patent applications which claim priority to this patent application and/or any patents or patent applications to which priority is claimed by this patent application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to

Deposit Account No. 06-1447. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Respectfully submitted,

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